**IN THE SUPREME COURT OF IOWA**

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**SUPREME COURT NO. 19-0431**

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**Upon the Petition of**

**NO BOUNDRY LLC,**
**Plaintiff-Appellee,**

**And Concerning**

**CORNELL HOOSMAN,**
**Defendant-Appellant**

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**APPEAL FROM THE IOWA DISTRICT COURT**
**FOR BLACK HAWK COUNTY**
**THE HONORABLE ANDREA DRYER, DISTRICT COURT JUDGE**

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# APPELLANT'S FINAL BRIEF

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## ROUTING STATEMENT

This case is appropriate for assignment to the Court of Appeals because there are no provisions of the Iowa Constitution or statutes that give the Iowa Supreme Court exclusive jurisdiction. Iowa R. App. P. 6.1101. This case does not involve any matters that have been set forth as criteria for retention. *Id*. This case involves interpretation of Iowa Rule of Civil Procedure 1.977 and this case should be transferred to the Iowa Court of Appeals because the case presents the application of existing legal principles. *Id*.

## STATEMENT OF THE CASE

This case involves a default judgment entered against Appellant Cornell Hoosman ("Cornell") in an action for recovery of real estate under Iowa Code Chapter 646. The judgment was entered by default on February 21, 2019. The Appellee, No Boundry, LLC ("No Boundry") obtained a Writ of Removal and Possession on February 25, 2019. Prior to execution of the writ, Cornell filed an Application for Injunction on March 13, 2019. On March 14, 2019, Cornell filed a timely motion asking the court to stay the writ and set aside the judgment that had previously been entered by default.

On March 15, 2019, the district court denied all of Cornell's requests. Also on March 15, 2019, Cornell filed a motion to enlarge and amend. No Boundry executed the writ on March 18, 2019. Cornell filed his notice of

appeal on the same day. Cornell also asked this Court to stay the execution of the writ. This Court temporarily stayed the writ, and the parties submitted written arguments. The Court ultimately withdrew the stay.

## STATEMENT OF THE FACTS

Cornell Hoosman is a disabled man who may lose his home over $220 in unpaid property taxes, without ever having a meaningful chance to defend himself. Cornell owns his home at 343 Albany Street, Waterloo, Iowa, free and clear of any liens or mortgages. App. 43. Cornell obtained the home in 2011 by quitclaim deed, and it is his only major asset. *Id*. His sole income is $771 per month in Supplemental Security Income (SSI) and $64 in food assistance. *Id*. Cornell has been found to be incompetent to stand trial in criminal cases on two separate occasions. App. 23.

Due to unpaid property taxes from 2014, the Black Hawk County Treasurer placed Cornell's home on the tax sale list for June 2016. App. 8-9. A company called Wago 131 purchased the parcel at tax sale on June 20, 2016 for $220. *Id*. on November 30, 2018, the Black Hawk County Treasurer issued a tax deed in favor of Wago 131, who contemporaneously transferred its interest to No Boundry. *Id*. The deed was recorded on December 11, 2018. *Id*.

Cornell attempted to have his taxes suspended or abated based on his disability in December 2018, but was unsuccessful for reasons not fully

developed in the record. App. 20-21.

No Boundry filed this action on January 14, 2019 petitioning the court for recovery of real estate pursuant to Chapter 646 of the Code of Iowa. App. 6-9. Cornell was personally served with the Original Notice, Petition, and Exhibit A on January 16, 2019. App. 10. No Boundry sent Notice of Intent to File Written Application for Default Judgment to Cornell by mail on February 6, 2019. App. 12. No Boundry filed a Motion for Default on February 19, 2019. App. 14-15. The Iowa District Court in and for Black Hawk County entered the Order for Judgment by default on February 21, 2019, awarding No Boundry immediate and exclusive possession of the residence, and ordered the issuance of a writ of possession. App. 16-17. The district court issued a Writ of Removal and Possession on February 25, 2019, commanding the sheriff to remove Cornell and to put No Boundry in possession of the property. App. 18-19.

Cornell, through attorney Maurice Spencer, filed an "Application for Injunction" on March 13, 2019. App. 20-21. Cornell argued in his application for injunction that if he was allowed an opportunity to present his legal arguments, then the result would likely be an order to set aside the judgment that was entered by default. *Id.*

On March 14, 2019, Cornell obtained an attorney through Iowa Legal Aid. At 8:05 PM the following day, he filed through counsel a Motion to Set

Aside Default. App. 22-24. The motion advanced the argument that he had good cause to set aside the default. *Id*. The motion also clearly stated that Cornell had as a good faith defense in the extended redemption period for persons under legal disability pursuant to Iowa Code 447.7. *Id*. Finally, the motion argued that Cornell's disability would bar issuance of a default judgment as no guardian ad litem had been appointed. *Id*.

The district court denied Cornell's motion on Friday, March 15, 2019 at 9:07AM. App. 25-26. The motion was heard at order hour on arguments of counsel, but no factual record was made. *Id*. The district court did not provide any reasons for the denial of the motion to set aside. *Id*.

Later that day, Cornell filed a Motion to Enlarge and Amend the findings and conclusions of the order denying the Motion to Set Aside Default. App. 27-30. Cornell provided additional details to the allegations made in his earlier motions, and attached a "Competency to Stand Trial Evaluation" from May 2013 as an exhibit. *Id*. Cornell also sought a stay of the eviction.

Before the district court could rule on the Motion to Enlarge and Amend, the Black Hawk County Sheriff was directed to execute the writ on the following Monday, March 18, 2019. Resistance to Application to Stay Writ. Faced with immediate removal from his home, Cornell filed a Notice of Appeal on Monday, March 18, at 11:40 AM, and requested a stay. Notice of Appeal. The Iowa Supreme Court entered an order temporarily granting the

request for stay. Order Granting Stay. The order was signed at 2:51 PM on Monday March 18. *Id*. By that time, the Sheriff had already executed the writ causing No Boundry to be put in possession of the property and causing Cornell to be removed from possession of the property. Resistance to Application to Stay Writ. The parties submitted written arguments about the order for stay. This Court entered an order on March 20, 2019 denying Cornell's request to stay the writ. Order Denying Writ.

## ARGUMENT

### I. THE DEFAULT AGAINST CORNELL SHOULD HAVE BEEN SET ASIDE

*Preservation of Error & Scope of Review*

Cornell argues that the district court erred in not setting aside the default due to good cause shown, and due to the failure to appoint a guardian ad litem. Error was preserved in his Motion to Set Aside and his Notice of Appeal.

The district court has broad discretion in ruling on a motion and will be reversed only for abuse of discretion. *Central Nat. Ins. Co. of Omaha v. Insurance Co. of North America*, 513 N.W.2d 750, 754 (Iowa 1994). However:

> We are more reluctant to interfere with a court's grant of a motion to set aside a default and a default judgment than with its denial. In that sense, we look with disfavor on a denial of such a motion, and we think all doubt should be resolved in favor of setting aside

> the default and default judgment. This attitude reflects our view of the underlying purpose of rule 236: 'to allow a determination of controversies on their merits rather than on the basis of nonprejudicial inadvertence or mistake.'

*Brandenberg v. Feterl Mfg. Co.*, 603 N.W.2d 580 (Iowa 1999) (internal citations omitted).

*Discussion*

**A. There Was Good Cause To Set Aside The Default Judgment**

"On motion and for good cause shown… the court may set aside a default or the judgment thereon, for mistake, inadvertence, surprise, excusable neglect or unavoidable casualty." Iowa R. Civ. P. 1.977. A motion to set aside a default should be liberally considered. *Brandenburg* at 584. "Good cause is a sound, effective, and truthful reason. It is something more than an excuse, a plea, apology, extenuation, or some justification, for the resulting effect." *Central Nat. Ins. Co. of Omaha* at 754. "Unavoidable casualty" is some casualty or misfortune arising from conditions or circumstances that prevented the party from doing something that, except for the misfortune, would have been done. *Id*. at 755.

As opposed to unavoidable casualty, reviewing courts require some evidence showing intent or bad faith by the defaulting party in order to maintain the default. "To uphold the denial of a motion to set aside a default

and default judgment, there must be substantial evidence that the defaulting party willfully ignored or defied the rules of procedure." *Brandenburg* at 585. This bar to uphold a denial of a set-aside is higher because "[t]he purpose of the rule is to allow determination of a controversy on its merits, rather than on the basis of non-prejudicial inadvertence or mistake." *Hannan v. Bowles Watch Co.*,180 N.W.2d 221 (Iowa 1970), *citing Edgar v. Armored Carrier Corp.*, 128 N.W.2d 922 (Iowa 1965).

The Iowa Supreme Court has synthesized these principles into a three-factor test, laid out as follows:

> First, did the defaulting party actually intend to defend? Whether the party moved promptly to set aside the default is significant on this point. Second, does the defaulting party assert a claim or defense in good faith? Third, did the defaulting party willfully ignore or defy the rules of procedure or was the default simply the result of a mistake?

*Central Nat. Ins. Of Omaha* at 756.

Applying the first factor of the test to the present case, Cornell intended to defend the suit. He promptly filed his motion to set aside 21 days after the judgment, which weighs in favor of granting the motion to set aside default. *See Millington v. Kuba*, 532 N.W.2d 787, 792 (Iowa 1995). More fundamentally, due to the nature of his disability, the record such as it is suggests Cornell was unable to raise a defense without assistance. As soon as he obtained legal counsel, counsel filed a motion on his behalf to try to return

to the merits of this case.

Second, Cornell had a good faith defense, explored in Section I-B of the argument section of this brief.

Finally, there is no evidence in the record that Cornell willfully ignored or defied the rules of civil procedure, nor did the district court so find. In order to willfully ignore or violate the rules, one must first understand what they are. Due to the nature of his disability, Cornell could not form the requisite intent to willfully game the system by defying the rules concerning default judgments. To find otherwise would serve only to punish him for a fact which he cannot help. His disability should not bar him from having his case heard on its merits.

### B. Cornell Had a Good Faith Defense, i.e. The Extended Redemption Period For Persons Under a Legal Disability

For the purposes of setting aside a default judgment, "[g]ood cause also requires at least a claimed defense asserted in good faith." *Central Nat. Ins. Co. of Omaha* at 754. Should he be allowed to present it, Cornell has a meritorious and straightforward defense to the action, in that he has extra time to redeem his property based on his legal disability – i.e., that he is "of unsound mind." Iowa Code 445.1(6).

The statutorily prescribed tax deed form states that the tax deed holder's rights are subject "to all the rights of redemption provided by law." Iowa Code

448.2. Statutes authorizing redemption of lands from tax sales will be construed liberally in favor of parties entitled to redeem. *Burton v. Hintrager*, 18 Iowa 348 (Iowa 1865).

The general rule is that property can be redeemed before execution of the tax deed. However, this rule is superseded by statute in regard to interests held by persons with legal disabilities:

> [i]f a parcel of a person with a legal disability is sold at tax sale and the county treasurer has delivered the treasurer's deed, the person with the legal disability or the person's legal representative may redeem the parcel at any time prior to one year after the legal disability is removed by bringing an equitable action for redemption in the district court of the county where the parcel is located[.]

Iowa Code 447.7. The statute goes on to establish the process by which redemption may take place for those under legal disability:

> If the court determines that the person maintaining the action or the person's legal representative is entitled to redeem by virtue of legal disability or prior legal disability, the court shall so order. The order shall determine the rights, claims, and interests of all parties, including liens for taxes and claims for improvements made on or to the parcel by the person claiming under the tax title. The order shall establish the amount necessary to effect redemption. The redemption amount shall include the amount for redemption computed in accordance with section 447.1 or 447.3, whichever is applicable, including interest computed up to and including the date of payment of the total redemption amount to the clerk of court and the amount of all costs added to the redemption amount in accordance with section 447.13.
>
> Upon timely receipt of the payment, the court shall enter judgment declaring the treasurer's deed to be void and determining the resulting rights, claims, and interests of all

> parties to the action. In its judgment, the court shall direct the clerk of court to deliver the entire amount of the redemption payment to the person claiming title under the treasurer's deed.

*Id.*

The statute also contemplates the situation exemplified by the present case – i.e., that the legal disability often prevents the person from understanding and thus executing their redemption rights until they are facing down an action by the tax deed buyer for possession. The Code provides:

> If a person with a legal disability remains in possession of the parcel after the recording of the treasurer's deed, and if the person claiming under the tax title properly commences an action to remove the person from possession, the person with a legal disability shall forfeit any rights of redemption that the person may have under this section, unless… a counterclaim in the removal action asserting the [person's] redemption rights[.]

*Id*.

The legislature has recognized for over a century that it is unfair to award a windfall by virtue of a tax deed obtained against someone who was legally unable to present a defense. As it stands now, No Boundry has obtained Cornell's home, the only major asset he owns and may ever own, for unpaid taxes totaling a paltry $220. Furthermore, the tax deed was only obtained by circumventing the extended redemption rights granted to those under legal disability. The court should not allow Cornell's interests in this matter to perish without affording him the opportunity to put up a fair fight and defend himself, now that he has finally obtained counsel and unlocked the path to

protect his home.

### C. Iowa Rule Of Civil Procedure 1.211 Prohibits Default Judgment Without A Defense Against A Person Who Is Under A Legal Disability

The final reason that the judgment against Cornell must be set aside is that it was granted without first appointing a guardian ad litem. Iowa R. Civ. P 1.211 provides that "[n]o judgment without a defense shall be entered against a party adjudged incompetent, or whose physician certifies to the court that the party appears to be mentally incapable of conducting a defense." Furthermore, "[i]f a party served with original notice appears to be subject to rule 1.211, the court may appoint a guardian ad litem for the party[.]" Iowa R. Civ. P. 1.212. Rule 1.212 is intended to bring before the court, through one acting as an officer of the court, the vicarious presence of one who for some reason is unable to attend a civil trial or present a defense. *In re Marriage of McGonigle*, 533 N.W.2d 524, 525 (Iowa 1995).

In the case of *In re Hickman*, 533 N.W.2d 567 (Iowa 1995), the Iowa Supreme Court held that the requirement to appoint a guardian ad litem did not apply to civil asset forfeiture cases. The Court reasoned that, because a forfeiture action is styled as being brought against the property itself and not the owner, rule 1.211 would not apply to this kind of *in rem* proceeding. *Id*. However, the present action is not a civil forfeiture action. Furthermore, an action under Iowa Code Chapter 646 allows for the recovery of damages as

well as possession. Iowa Code 646.6. No Boundary did in fact seek damages against Cornell in their petition. Petition.

Cornell was adjudged incompetent to stand trial twice in two separate criminal cases within the six years preceding judgment in the present case. Cornell further alleged that he was currently under a disability. The district court did not make findings to the contrary, nor set the matter for an evidentiary hearing. Had a guardian ad litem been timely appointed, that person could have raised as an affirmative defense the extended redemption period pursuant to Iowa Code 447.7(3)(a). The failure to appoint a guardian ad litem renders the judgment voidable, and provides an additional basis for setting aside the default.

## CONCLUSION

Cornell requests the Court reverse the district court's order denying his Motion to Set Aside the Default Judgment, allow him to file an answer and counterclaims, and remand for further proceedings on the merits.

## REQUEST FOR ORAL SUBMISSION

Cornell Hoosman respectfully requests oral argument.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I, Alex Kornya, hereby certify that the Appellant's Proof Brief was electronically filed on the 17th day of May, 2019, and was electronically served upon the Appellee's counsel via electronic mail / EDMS.

/s/ Alex Kornya
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